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DONNA GARCIA

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DONNA GARCIA,
Plaintiff,
v.
RESURGENT CAPITAL SERVICES, L.P.,
LVNV FUNDING, LLC, and THE
BRACHFELD LAW GROUP, P.C.,
Case No.: CV11-01253 EMC
REQUEST FOR JUDICIAL NOTICE
Honorable Edward M. CHEN
Courtroom 5, 17th Floor

Defendant(s).

Plaintiff, by and through her attorneys, hereby respectfully requests the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the following facts:

In the case, *LVNV Funding, LLC. v. Nancy Taylor*, Santa Clara County Superior Court Case No.: 08-CV-119003 (September 8, 2009) the trial Court in that matter awarded a fee multiplier of 2.0 times costs to the prevailing party. A copy of the Trial Court's decision awarding a fee multiplier is attached hereto as **Exhibit 1**.

1 In *Taylor*, a collection was initially brought by LVNV Funding, LLC through their
 2 attorney Erica Brachfeld of the Brachfeld Law Group, against consumer Nancy Taylor to
 3 collect on a consumer credit card account alleged to be owed by Plaintiff. See Memorandum
 4 of Points and Authorities, attached as **Exhibit 2**

5 Taylor filed an answer and cross complaint alleging various violations of the Federal
 6 and California Fair Debt Collection Practices Acts. An order granting terminating sanctions in
 7 favor of Taylor were granted after LVNV Funding, LLC failed to comply with the Court's
 8 order compelling discovery. *Ibid.* The Court awarded Taylor a fee multiplier of 2 times fees
 9 and costs. **Exhibit 1.**

10 Again in, *Credigy Receivables, Inc. v. Drader*, Alameda County Superior Court Case
 11 No.: WG 04176995 (December 30, 2005) the trial Court awarded a fee multiplier of 2.0 times
 12 costs to the prevailing party. A copy of the Trial Court's decision awarding a fee multiplier is
 13 attached hereto as **Exhibit 3.**

14
 15 The *Credigy* case saw the Court grant the prevailing party attorneys fees of \$23,285.
 16 *Ibid.* After the Court applied the 2.0 multiplier the Court awarded the prevailing party a total
 17 of \$46, 570.00 based upon the contingent risks with the Court citing *Ketchum v. Moses* 24
 18 Cal.4th 1122. *Ibid.*

19
 20 The first page of **Exhibit 4** is a press release issued by the State of Maryland. Courts
 21 within the Ninth Circuit have taken judicial notice of press releases issued by State Attorney
 22 General's Offices since they are a source whose accuracy cannot reasonably be questioned (*Culp*
 23 *v. McGavic*, 2011 U.S. Dist. LEXIS 118999 (D. Or 2011):¹

24 The article in *Willamette Week* contains selected quotations from a press release issued by
 25 Oregon Attorney General John Kroger. The court will exercise its discretion to take
 26 judicial notice of the statements reported by the newspaper because the press release itself
 constitutes a source whose accuracy cannot reasonably be questioned. Fed. R. Evid.

27
 28 ¹ The press release is available at:
<http://www.doj.state.or.us/releases/2011/rel031711.shtml>.

1 201(b)(2).

2 The press release issued by the State of Maryland Department of Labor, Licensing and
 3 Regulation, is a similarly reliable government source. The press release, which is the first page
 4 of **Exhibit 4**, can be found at: <http://www.dllr.state.md.us/whatsnews/lvnb.shtml>.

5 The remaining pages of **Exhibit 4** are the Summary Order to Cease and Desist and
 6 Summary Suspension of Collection Agency Licenses, which was explained in the press release.
 7 The Order can be found on the State of Maryland's website at:

8 <http://www.dllr.state.md.us/finance/consumers/pdf/lvnvc&d.pdf>

9
 10 Pursuant to Fed. R. Civ. P. 201 the Court can take judicial notice of information on a
 11 government entities website (*Davidson v. J.P. Morgan Chase, N.A.*, 2011 U.S. Dist. LEXIS
 12 135573 (N.D. Cal. 2011)):

13 The court takes judicial notice of the P&A Agreement, which is available on the
 14 FDIC's website, under Fed. R. Evid. 201. *See* Fed. R. Evid. 201 (courts may
 15 take judicial notice of facts "capable of accurate and ready determination by
 resort to sources whose accuracy cannot reasonably be questioned").

16 Additionally, the Court can take judicial notice of orders and judgments. *Gates v. Asset*
 17 *Acceptance, LLC*, 2011 U.S. Dist. LEXIS 81189 (S.D. Cal. 2011):

18 In support of its Motion, Asset requests that the Court take judicial notice of (1)
 19 the complaint filed in *Asset Acceptance v. Gates*, San Diego County Superior
 20 Court, Case No. 37-2009-00069393-CL-CL-EC, and (2) the judgment entered in
Asset Acceptance v. Gates, San Diego County Superior Court, Case No. 37-2009-
 21 00069393-CL-CL-EC. The Court **GRANTS** the request for judicial notice, but
 22 only for purposes of noticing the existence of the San Diego County Superior
 23 Court lawsuit and the claims made therein. *See In re Bare Essentials, Inc. Sec.*
Litig., 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010) ("[T]he court may take
 24 judicial notice of the existence of unrelated court documents, although it will not
 take judicial notice of such documents for the truth of the matter asserted
 therein.").

25 Furthermore, judicial notice may be taken of "adjudicative facts" such as court records
 26 existence and content. Rutter, Federal Civ. Pro. Before Trial, Calif. & 9th Cir. Editions, Ch. 14.
 27 Summary Judgment, E. Matters Constituting Proof, 4 [14:190] Judicial Notice; FRE 201.
 28

1 Therefore, Plaintiff respectfully requests the Court grant this Request for Judicial Notice,
2 and deny Defendants' objection to Exhibit 3 as evidence (Docket # 90).

3 DATED: June 7, 2012

4 RESPECTFULLY SUBMITTED,

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6 /s/Ronald Wilcox

7 RONALD WILCOX
8 PAUL H. NATHAN
9 Attorneys for Plaintiff
10 DONNA GARCIA

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